

Application Number 09/808,849
Response to Office Action mailed June 3, 2004

REMARKS

This Amendment is responsive to the Office Action dated June 3, 2004. Applicant has amended claims 4, 8, 9, 14, 16, 17, 21, 25, and 26 to correct minor antecedent issues. In addition, Applicant has added new claims 27 and 28. Claims 1-28 are pending.

Claim Rejection Under 35 U.S.C. § 103

Claims 1-4, 14-17

In the Office Action, the Examiner rejected claims 1-4, and 14-17 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy (US 6,146,148). Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

In particular, neither Hiratsuka et al. nor Stuppy provides any teaching that would have suggested identifying a technician responsible for adjustment of color characteristics of an image, and permitting an upload of the image to a web server if the technician satisfies a qualification criterion, as required by all pending claims.

In support of the rejection, the Examiner characterized Hiratsuka et al. as disclosing adjustment of color characteristics of an image and permitting an upload of the image to a web server. However, the Examiner acknowledged that Hiratsuka et al. fails to disclose identifying a technician responsible for adjustment of color characteristics of an image, and permitting an upload of the image to a web server if the technician satisfies a qualification criterion.

Hence, the Examiner recognized that Hiratsuka et al. discloses virtually none of the requirements of Applicant's claims. The Examiner cited Stuppy, however, as describing "information uploaded to a user based on their profile." On this basis, the Examiner concluded that it would have been obvious to "apply Stuppy to Hiratsuka, providing Hiratsuka the benefit of uploading the adjust [sic] image color to the user based on their profile to insure the correct information correlates with the correct user."

The Examiner's analysis appears to be based on a misinterpretation of the applied references, a misinterpretation of the requirements of Applicant's claims, or both. As discussed

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in greater detail below, Hiratsuka et al. is directed to adjustment of color images, while Stuppy is directed to preparation of individualized educational materials for students. The Examiner cited Stuppy in view of the deficiencies in Hiratsuka et al. Yet, Stuppy makes no mention whatsoever of the adjustment of color characteristics of an image, much less a determination of whether a technician responsible for such an adjustment satisfies a qualification criterion.

In addition to the various deficiencies already recognized by the Examiner, the Hiratsuka et al. reference also fails to disclose "permitting an upload of the image to a web server." Hiratsuka et al. is directed to a color adjustment method in which "interpolated color after color adjustment [] is to be displayed on an after-adjustment image window." Hiratsuka et al. describes the presentation of "before" and "after" images in separate windows on a common display. The "before-adjustment image window" and "after-adjustment image window" represent the image before and after application of a color adjustment.

At no point does Hiratsuka et al. contemplate uploading an image to a web server, as suggested by the Examiner. Indeed, the Hiratsuka et al. reference makes no mention of the terms "upload," "web," or "Internet." The Examiner conceded that Hiratsuka et al. fails to disclose "identifying a technician" or permitting an image upload "if the technician satisfies a qualification criterion," as required by claim 1. In view of these deficiencies, it is unclear how the Hiratsuka et al. reference could have been considered pertinent to the claimed invention, other than for its mention of color adjustments.

The relevance of the Stuppy reference is even more questionable. According to the Examiner, Stuppy teaches "information uploaded to a user based on their profile." Even if the Examiner's characterization of Stuppy is correct, it bears no relationship to the requirements of Applicant's claims. In particular, the generation of individualized educational materials based on a student profile is completely unrelated to the evaluation of a qualification criterion for a technician responsible for adjusting the color characteristics of an image, as required by the claims. The student in the Stuppy reference is not a technician responsible for adjusting an image, nor even a person responsible for preparing the educational materials. Rather, the student is the intended recipient of the educational materials.

In general, it is unclear how the generation of an electronic student workbook correlated to a student profile, as taught by Stuppy, bears any relationship to the requirements of

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Applicant's claims. Stuppy does not describe identifying a technician responsible for adjustment of color characteristics of an image. Nor does Stuppy provide any teaching that would have suggested permitting an upload of an image to a web server if the technician satisfies a qualification criterion. Indeed, Stuppy is completely unrelated to adjustment of color characteristics, or the qualifications of technicians responsible for such adjustment. Rather, as discussed above, Stuppy describes the formulation of individualized student workbooks for educational purposes. The workbooks are not prepared by the students, but rather distributed to the students. Therefore, the Stuppy reference fails to provide any teaching pertinent to the features of the claimed invention for which it was cited by the Examiner.

Further, to the extent Stuppy teaches any pertinent features, Stuppy conveys no teaching that would have suggested modification of Hiratsuka et al. to include such features. For example, it is unclear why one of ordinary skill in the art would have looked to a reference that concerns preparation of educational materials, as in Stuppy, in contemplation of modifications to a method for adjusting color characteristics of an image, as in Hiratsuka et al. Any resulting modification would fail to conform to the requirements of Applicant's claims. For at least these reasons, Hiratsuka et al. and Stuppy fail to support a prima facie case of unpatentability with respect to the pending claims.

Claims 2-4 are dependent on claim 1, and are therefore patentable for the same reasons. Further, these claims require additional elements that the applied references also fail to disclose or suggest.

For example, with respect to claim 2, the Examiner stated that, in light of Hiratsuka et al. and Stuppy, one of ordinary skill in the art would have found obvious the requirement of claim 2 that the qualification criterion include a minimum level of color adjustment skill. In support of this proposition, the Examiner stated "Stuppy mentions users that receive information or test based on the mastery of certain learning objectives or skills." As discussed above, the relative skill level of a student as a factor in assembling education materials simply has nothing to do with the level of skill of a technician responsible for adjusting color characteristics of an image. Again, according to the claims, the adjustments in color characteristics are made by a technician and uploaded to a web server. In Stuppy, a student "user" receives individualized course

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materials, and does not participate in preparation of those materials. Any comparison of Stuppy to the requirements of the claimed invention is unfounded.

With respect to claim 3, the applied references lack any teaching that would have suggested a qualification criterion "that includes a minimum level of care in adjusting color characteristics of the image." The Examiner cites Stuppy as disclosing different *skill* levels. Again, Stuppy refers to the skill levels of recipients of course materials. Accordingly, it is unclear how a level of care would have any significance in the context of course materials prepared for students.

Claims 14-16 recite limitations similar to those recited in claims 1-3. Therefore, claims 14-16 are patentable for at least the reasons expressed above.

In addition to the shortcomings identified above, Applicants submit that the Hiratsuka et al. and Stuppy references are clearly directed to nonanalogous arts. Each reference is in a completely different field of endeavor, and address no problems reasonably pertinent to one another. For example, Hiratsuka et al. is concerned entirely with adjustment of color images. On the contrary, Stuppy is directed to generation of educational materials for students. Stuppy fails to address any problems contemplated by Hiratsuka et al. In particular, one of ordinary skill in the art would not reasonably have been expected to solve any problems associated with color imaging by consultation of a reference dealing with assessment, management and instruction of students. Therefore, Stuppy does not relate to an analogous art, and may not properly be used as a prior art reference in this situation.

Even if, for purposes of argument, Stuppy were to relate to an analogous art, the Examiner has identified no teaching in the prior art of a motivation to combine the teaching of the applied references. Specifically, the Examiner has failed to explain why one of ordinary skill in the art would have looked to Stuppy for modification of a method for color adjustments, as disclosed by Hiratsuka et al.

The Examiner asserted that combining these references would "provid[e] Hiratsuka et al. the benefit of uploading the adjust [sic] image color to the user based on their profile to insure the correct information correlates with the correct user." However, Stuppy makes no mention of the desirability of correlating color information with a particular user. Moreover, any modification along those lines would not conform to the requirements of Applicant's claims.

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Again, the claimed invention focuses on qualifications of a technician responsible for adjustment of color characteristics of an image, and not a recipient of such an image. In direct contrast, Stuppy is not concerned with the qualifications of a person preparing educational materials, but rather a recipient.

The Examiner's conclusion of obviousness, and particularly the cited motivation to modify Hiratsuka et al. in view of Stuppy, is unsupported by any substantial evidence in the record. Further, the asserted combination of Hiratsuka et al. and Stuppy would not even conform to the systems and methods recited in Applicant's claims 1-4 and 14-17. Applicant therefore respectfully requests that the rejection of claims 1-4 and 14-17 as being unpatentable over Hiratsuka et al. in view of Stuppy under 35 U.S.C. 103(a) be withdrawn.

Claims 5-6, 18-19

In the Office Action, the Examiner rejected claims 5, 6, 18, and 19 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy (US 6,091,518) as applied to claims 1 and 14, and further in view of Anabuki (US 6,091,518). Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Claims 5, 6, 18 and 19 are dependent on independent claims 1 and 14, and incorporate, respectively, all of the limitations of the base claims. Therefore, claims 5, 6, 18 and 19 are patentable for the reasons expressed above.

In addition, dependent claims 5 and 6 require features that are clearly lacking in Hiratsuka et al., Stuppy, and Anabuki. For example, the applied references lack any teaching that would have suggested including in an image file or metadata for an image file an "indication of the identity of the technician." The Examiner asserted that it would have obvious to provide Hiratsuka et al. with an image file with a header as taught by Anabuki, and then add an indication of the identity of a technician in view of Stuppy. Such a modification would not have been obvious and, moreover, would not result in the claimed invention.

There are at least three basic problems with the Examiner's analysis. First, the "user" in Stuppy is not a technician responsible for adjustment of color characteristics, nor even a

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technician responsible for preparation of education materials, for that matter. Again, the "user" in Stuppy is the student. Second, the Examiner referred to the "user having a profile which can be seen by a teacher" in Stuppy. However, the cited portion of the Stuppy reference (Col. 2, lines 2-5) seems to make no mention of a user profile capable of being "seen by a teacher." Third, the Stuppy reference clearly fails to teach anything whereby "the user can see who made adjustments to the image," as suggested by the Examiner. Moreover, neither Hiratsuka et al. nor any other reference of record provides any suggestion of the desirability of being able to see who made adjustments to the images. Claims 18-19 contain language similar to claims 5-6, and are patentable for the same reasons. Applicant respectfully requests that the rejection of claims 5-6 and 18-19 be withdrawn.

Claims 7, 9, 20 and 22

In the Office Action, the Examiner rejected claims 7, 9, 20 and 22 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy as applied to claims 1 and 14, and further in view of Bruck et al. (US 6,008,836). Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Claims 7, 9, 20 and 22 are dependent on independent claims 1 and 14, and incorporate, respectively, all of the limitations of these base claims. These claims are therefore patentable for the reasons expressed above.

In addition, neither Bruck et al. nor any other applied references discloses the additional elements required by claims 7, 9, 20 and 22. For example, the applied references lack any teaching that would have suggested auditing the images adjusted by a technician to assess the quality of adjustments, a feature required by both claims 7 and 9. In particular, the Examiner cited Bruck et al. as describing "a user that selects screen [sic] from a WebTV system, determines the quality and adjusts the Contrast, Brightness and Sharpness control, etc to the users liking." In general, Applicant does not dispute the Examiner's description of Bruck et al., but questions what it has to do with the requirements of the claimed invention. In particular, it is unclear how adjusting contrast, brightness and sharpness, per Bruck et al., could possibly amount

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to a teaching of *auditing* images adjusted and uploaded by a technician to *assess the quality of the technician's adjustments*, as required by the claims at issue. Bruck et al. provides no teaching concerning an auditing process to assess the quality of adjustments made to a color image by a technician.

As another example, the applied references lack any teaching that would have suggested "qualifying the technician for upload of the image if the technician satisfies qualification criterion," or "revoking the qualification from the technician in the event the assessed quality is unacceptable," important elements further required by claim 9. As discussed above with respect to claim 2, Stuppy fails to disclose a technician qualification criterion altogether. Furthermore, the only basis offered by the Examiner in support of applying the Bruck et al. reference was the cited portion that described adjusting the "Contrast, Brightness, and Sharpness control, etc to the users liking." Applicant can find no teaching of "qualifying" and "revoking," per claim 9, in either the cited portion or any other portion of the Bruck et al. reference.

Claims 20 and 22 contain language similar to claims 7 and 9, and are patentable for the same reasons. The asserted combination of Hiratsuka et al., Stuppy, and Bruck et al. fail to disclose required elements of Applicant's claims. Applicant therefore respectfully requests that the rejection of claims 7, 9, 20 and 22 be withdrawn.

Claims 8 and 21

In the Office Action, the Examiner rejected claims 8 and 21 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy as applied to claim 1 and 14, in view of Bruck et al., and in further view of Anabuki (US 6,091,518). Applicant respectfully traverses the rejection. Anabuki provides no teaching sufficient to cure the many deficiencies already identified above in the Hiratsuka et al. and Stuppy references.

Claims 10 and 23

In the Office Action, the Examiner rejected claims 10 and 23 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy as applied to claim 1 and 14, and further in view of Holub (US 6,043,909). Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by

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Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention. When added to the teachings of Hiratsuka et al. and Stuppy, Holub does not render claims 10 and 23 unpatentable, since Holub provides no teaching sufficient to cure the basic deficiencies in Hiratsuka et al. and Stuppy as discussed above. Therefore, this rejection should be withdrawn.

Claims 11 and 24

In the Office Action, the Examiner rejected claims 11 and 24 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy as applied to claim 1 and 14, in view of Holub, and in further view of Holtzman et al. (USPN 2001/0027439 A1). Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention. When added to the teachings of Hiratsuka et al., Stuppy, and Holub, Holtzman et al. does not render claims 11 and 24 unpatentable, since Holtzman et al. provides no teaching sufficient to cure the basic deficiencies in Hiratsuka et al., Stuppy, and Holub as discussed above. Therefore, this rejection should be withdrawn.

Claim 12

In the Office Action, the Examiner rejected claim 12 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy as applied to claim 1, in view of Holub as applied to claim 10, and in further view of Anabuki (US 6,091,518). Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention. When added to the teachings of Hiratsuka et al., Stuppy, and Holub, Anabuki does not render claim 12 unpatentable, since Anabuki provides no teaching sufficient to cure the basic deficiencies in Hiratsuka et al., Stuppy, and Holub as discussed above. Therefore, this rejection should be withdrawn.

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Claim 13

In the Office Action, the Examiner rejected claim 13 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy as applied to claim 1, in view of Holub as applied to claim 10, and in further view of Anabuki as applied to claim 12, and in further view of Bruck et al. (US 6,008,836). Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention. When added to the teachings of Hiratsuka et al., Stuppy, Holub, and Anabuki, Bruck does not render claim 13 unpatentable, since Bruck provides no teaching sufficient to cure the basic deficiencies in Hiratsuka et al., Stuppy, Holub, and Anabuki as discussed above. Therefore, this rejection should be withdrawn.

Claim 25

In the Office Action, the Examiner rejected claim 25 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy as applied to claim 14, in view of Holub as applied to claim 23, in view of Holtzman et al. as applied to claim 24, and in further view of Anabuki (US 6,091,518). Applicant respectfully traverses the rejection to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention. When added to the teachings of Hiratsuka et al., Stuppy, Holub, and Holtzman et al., Anabuki does not render claim 25 unpatentable, since Anabuki provides no teaching sufficient to cure the basic deficiencies in Hiratsuka et al., Stuppy, Holub, and Holtzman et al. as discussed above. Therefore, this rejection should be withdrawn.

Claim 26

In the Office Action, the Examiner rejected claim 26 under 35 U.S.C. 103(a) as being unpatentable over Hiratsuka et al. (US 6,108,441) in view of Stuppy as applied to claim 14, in view of Holub as applied to claim 23, in view of Holtzman et al. as applied to claim 24, and in further view of Bruck et al. (US 6,008,836). Applicant respectfully traverses the rejection to the

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extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention. When added to the teachings of Hiratsuka et al., Stuppy, Holub, and Holtzman et al., Bruck does not render claim 13 unpatentable, since Bruck provides no teaching sufficient to cure the basic deficiencies in Hiratsuka et al., Stuppy, Holub, and Holtzman et al. as discussed above. Therefore, this rejection should be withdrawn.

New Claims

In this Amendment, Applicant has added new claims 27 and 28, which are directed to a method comprising creating image files representative of respective images, including with the image files an indication of an identity of a technician responsible for adjustment of color characteristics of the images, permitting upload of the images to a web server if the technician has a qualification level that satisfies a minimum level of color adjustment skill, performing an audit of at least some of the images to assess quality of the adjustments made by the technician, and updating the qualification level of the technician based on the audit. None of the applied reference provides any suggestion of such a method.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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9-3-04

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